Cobra Ltd., d/b/a Cobra Gunskin *and* United Brotherhood of Industrial Workers, Local 424, Lidia Aponte, and Victor Belevan. Cases 29-CA-9475-1, 29-CA-9475-2, and 29-CA-9475-3

23 August 1983

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS JENKINS AND ZIMMERMAN

On 29 December 1982 Administrative Law Judge Steven Davis issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings,[1] findings,[2] and conclusions[3] of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Cobra Ltd., d/b/a Cobra Gunskin, Farmingdale, New York, its officers, agents, successors, and assigns, shall take the action set forth in said recommended Order.

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] In the absence of exceptions thereto, Member Jenkins would adopt *pro forma* the dismissal of the allegation that Respondent unlawfully discharged admitted Supervisor Victor Belevan.

Member Jenkins finds it unnecessary, contrary to the Administrative Law Judge, to apply *Wright Line*, 251 NLRB 1083 (1980), in considering the discharges of employees Lidia Aponte and Froilan Santiago, inasmuch as the reasons advanced by Respondent to justify their discharges in fact either did not exist or were not relied upon. See *Limestone Apparel Corp.*, 255 NLRB 722 (1981).

[3] Although the Administrative Law Judge credited testimony that Vice President Joan Parlante and President John Parlante (the Administrative Law Judge misstated their positions) each told employee Lidia Aponte that the person responsible for the Union's presence at Respondent would be discharged, he made only one specific finding of an 8(a)(1) threat to discharge because of union activities—based on Joan Parlante's statement. We here correct that inadvertency and specifically find that John Parlante's statement was similarly a threat to discharge for union activities in violation of Sec. 8(a)(1).

DECISION

STATEMENT OF THE CASE

STEVEN DAVIS, Administrative Law Judge: Pursuant to charges filed on February 5, 1982, by Lidia Aponte, Victor Belevan, and United Brotherhood of Industrial Workers, Local 424, herein called the Union, an order consolidating cases, complaint, and notice of hearing was issued by Region 29 of the National Labor Relations Board on February 22, 1982, against Cobra Ltd., d/b/a Cobra Gunskin, herein called Respondent. The complaint alleges that Respondent interrogated its employees; threatened its employees with discharge if they became or remained members of the Union; offered and promised to its employees wage increases, vacations, and other benefits to induce them to refrain from engaging in activities in behalf of the Union; physically assaulted Victor Belevan, its supervisor, and discharged him; and discharged its employees Lidia Aponte and Froilan Santiago in violation of the Act.

The case was heard before me in Brooklyn, New York, on August 30 and 31 and September 2, 1982.

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the brief filed by the General Counsel, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent, a Connecticut corporation having its principal office and place of business in Farmingdale, New York, is engaged in the production and manufacture of leather holsters and belts and related products. It annually purchases and receives leather and other goods and materials valued in excess of $50,000 directly from suppliers located outside New York State. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The General Counsel's Prima Facie Case*

In late December 1981, employees Lidia Aponte and Froilan Santiago met with a friend, Jay Torres, and discussed with him their employment conditions and lack of certain benefits at Respondent.[1] Shortly thereafter, Torres arranged a meeting with Al Constantine, the Union's director of organizing, at which he, Constantine, Aponte, and Santiago discussed the need for the union organization of Respondent's employees. Constantine asked Aponte to set up a meeting of Respondent's employees for January 12, 1982.[2]

Aponte spoke to all the employees about the upcoming meeting. These conversations occurred for 2 days at lunch and also inside and outside the shop. Santiago told

[1] Torres is not an employer of Respondent.

[2] All dates hereafter are in 1982 unless otherwise stated.

four employees at lunch in the shop of the effort to organize Respondent.

On January 12, Constantine met at a restaurant with eight employees, including Aponte and Santiago. He described the employees' right to form a union and discussed the advantages of membership in the Union and of being covered by a collective-bargaining agreement. He distributed authorization cards and all eight employees present signed such cards and returned them to him. Thereafter, between January 12 and January 18, Aponte obtained two more signed authorization cards which she gave to Torres who submitted them to Constantine.[3]

On January 18, Hank Miller, the president of the Union, and Constantine visited Respondent's premises. Constantine told John Parlante, Respondent's vice president, that they were union officials and that the Union represented a majority of the employees employed by Respondent. Constantine added that he deemed recognition and stated that he was ready to prove the Union's majority status and begin negotiations. Constantine suggested that a card check be done by a priest. Mr. Parlante replied that he did not want a union. Constantine answered that the employees make that decision and their right to union representation is protected by law. Mr. Parlante then directed the two men to Mrs. Parlante. Constantine repeated his remarks to her. Mrs. Parlante responded, "I can't afford a union. I'll just have to lay everybody off." Constantine answered that he would request a Board-conducted election. He then was asked by Mr. Parlante to leave and he and Miller did so.[4]

The same day Constantine sent a certified letter to Respondent which stated *inter alia*, that "an overwhelming majority of your employees . . . have designated [the Union] as their exclusive representative for the purposes of collective bargaining with resepct to rates of pay, wages, hours and other terms and conditions of employment." The letter also stated that the Union requested negotiations with Respondent and asked it to contact the Union to arrange a time and date for negotiations. Respondent admitted receiving the letter, the receipt for which was marked as being received on January 20.

Victor Belevan, an admitted supervisor, testified that on January 19 or 20 he was asked by Mr. and Mrs. Parlante if he knew about the Union, if he had seen or spoken to any union representatives, if he had seen or heard of any meeting outside Respondent's premises, and if he had seen any employees signing or holding cards. Belevan replied that he had no knowledge of any of those activities. Mr. Parlante then asked Belevan to question the employees as to whether they were approached by the Union and also to inquire whether any employees knew anything about the Union.[5] Belevan admittedly then asked certain employees, including Aponte and Santiago, whether they knew anything about the Union and whether they signed cards for the Union. All of the employees denied knowledge of the Union. Aponte testified that later that day Mr. Parlante called Aponte into his office. Present was Mrs. Parlante who asked her if she knew anything about the Union. Aponte said that she did not. Mrs. Parlante then asked her whether she knew who brought the Union in. Aponte again denied knowledge. Mr. Parlante then told Aponte that, if he discovered who brought the Union in, that person would be fired.[6]

The following day Santiago was asked by Mr. Parlante whether he knew anything about the Union and if he knew whether any one signed a card for the Union. Santiago replied that he did not know.

Between January 18 and February 1, Mr. and Mrs. Parlante called Aponte into their office and asked her if she knew anything about anyone bringing in a union. Aponte denied any such knowledge.

On January 27 or 28, Mr. Parlante asked Belevan whether he knew of any meetings held outside the shop, asked him whether he saw any union cards or knew anything about them, and asked him to inquire of the employees whether they knew anything about the Union or union meetings or whether they signed cards for the Union. Belevan admittedly asked the employees these questions and all of the employees denied knowledge.[7] He reported this to Mr. Parlante.

On February 1, Mrs. Parlante called Aponte into her office and told her that she heard that Aponte and Jay Torres were involved in the Union. Aponte replied that she knew nothing about the Union and inquired of Mrs. Parlante where she received this information. Mrs. Parlante answered that the bank manager heard them talking about the Union and also heard that they were involved with and had brought in the Union. Mrs. Parlante added that if she discovered who was responsible that person would be fired. Aponte asked how the bank manager could have such information when he had never met her or Torres, and she again denied involvement with the Union. Mrs. Parlante asked her whether she knew if anyone else was involved with the Union and Aponte said that she did not. During the conversation, Mrs. Parlante told Aponte that she had to pay $20,000 for an attorney to "fight" the Union.

The following day, February 2, Aponte and Santiago arrived at work and found their timecards missing. They went to the office and were told by Mrs. Parlante that she (Parlante) was certain that they were the persons who brought the Union in and they were therefore fired. Mrs. Parlante added that her husband said that he did not "believe that"—that the two were among his best employees. Mr. Parlante then remarked that "these jackasses. These motherfuckers are still here. Give them their

[3] About 15 production employees are employed by Respondent.

[4] The above narrative is based on the uncontradicted testimony of Aponte and Santiago which I credit. I also credit Constantine's testimony as to his conversation with the Parlantes who corroborated his testimony that he stated that he represented the employees and wanted a card check by a priest. I also find that Mrs. Parlante told Constantine that she could not afford a union and would lay everyone off. Constantine impressed me as a truly believable witness who testified forthrightly and confidently. Respondent was in economic distress at the time and it is therefore fair to infer and find that Mrs. Parlante would have claimed an inability to afford the Union, and would also have offered to lay off employees.

[5] The Parlantes speak English only. Belevan speaks English and Spanish. Many of Respondent's employees speak and understand Spanish only.

[6] Aponte was uncertain whether Mr. Parlante's threat was made at this or a subsequent conversation.

[7] Belevan questioned all of the approximately 15 production employees. He interrogated some on January 18 and the rest on January 27 or 28.

fucking checks and tell them to get out of here already. I'm the brain here and they're the jackasses. I treat them so nice and then they stab me in the back. If you needed anything why didn't you come to me?" Mr. Parlante then told Mercedes, a person who transports employees from the Bronx to Farmingdale and who introduces prospective employees to employers in the area, "Look, I'm throwing them out. Tomorrow, bring me 10 more."[8]

Shortly thereafter, Belevan arrived at work. As he was getting out of his car prior to entering the shop, Frank Aceste[9] met him at his car, gave him a paycheck, and told him that Mr. Parlante no longer wanted to employ him. Belevan asked the reason. Aceste replied that he did not know, adding that "it is possible that it is because of the Union." Belevan then told Aceste that he wanted to see Mr. Parlante in order to find out why he was fired. Belevan approached Mr. Parlante who immediately told him to get out. Belevan was offended at this harsh remark, became very angry, and admittedly "lunged at" and "attacked" Parlante with his fists. Parlante then held Belevan. After he was released by Parlante he had a brief altercation with Aceste. He then left the shop.[10]

B. *Supervisory Status of Lidia Aponte*

The General Counsel alleges that Lidia Aponte is not a supervisor within the meaning of the Act. Respondent asserts that she is a supervisor.

Aponte was hired in September 1980 as a floorworker who cut thread, worked on the processing tables, and performed waxing and gluing operations. She testified that in or about September 1981 her duties changed to include training new employees. She taught all new employees, except sewing machine operators,[11] how to perform their work.[12] She watched them for 15 to 30 minutes, then did her own work, and later returned to check their work. Aponte would monitor the new employee for 1 or 2 days. She did not examine the work of employees of longer tenure. Aponte stated that she did not hire employees or interview prospective employees; however, she was present during the interview to act as an interpreter for the Parlantes, but was not asked for her opinion after the interview as to whether the applicant should be hired. However, she did recommend the hire of her husband, Froilan Santiago. She did not discharge employees and was never told that she possessed the authority to fire employees or recommend that they be fired. However, when she was training a new employee, Mr. Parlante asked her how the employee was performing. If she reported that the worker was slow, Mr. Parlante instructed her to tell the employee to leave and she did so. She did not discipline employees and was not told that she had such authority. She was not asked for a recommendation as to whether an employee should be promoted or given a pay raise. Employees would ask the Parlantes and not her for time off. Belevan or Mr. Parlante and not she rotated employees between various operations. However, Aponte admitted giving her opinion, when asked, as to how new and long-term employees were performing.

Joan Parlante testified that when Aponte was hired nearly all the other employees spoke Spanish only and since she was bilingual she was used to interpreting instructions to employees. Shortly after her hire, the Parlantes recognized that she was a fast learner and had leadership qualities. About 6 to 8 months after her hire, Mr. Parlante asked Aponte to watch the floor employees and see that they were working. Once, Aponte reported to Mr. Parlante that an employee was working too slowly and asked whether that worker should be spoken to. Parlante replied that she should speak to the employee, and Aponte then told the employee that unless she worked faster she would be fired by Mr. Parlante. Mrs. Parlante described Aponte's duties with respect to the floorworkers as follows: After the sewing machine operators finished their operation, she brought the completed materials to the tables and told the floorworkers to cut strings and glue the holsters. She showed the employees how to insert a spring into the holster. After the strings were cut she gave the article to employees working on the waxing machine. After that operation she brought the product to the table to be stitched, glued, and dried. Mrs. Parlante stated that Aponte would reprimand an employee by telling him that he did not correctly insert a spring into a holster. She then showed them how to insert the spring and watched them to ensure that they performed the job correctly. Aponte also made reports to Mr. Parlante as to the need for more raw materials, but Mrs. Parlante ordered those supplies from vendors.

Lidia Aponte's salary was $165 per week. Other production employees earned $150 to $200 per week, and the salary of admitted supervisor Victor Belevan was $235 per week.

John Parlante testified that he chose Aponte as a supervisor because her work was excellent, she spoke English, and she was a "leader." He stated that he told her that except for the sewing machine operators she was to check all the employees' work every 30 minutes, and instructed her to tell the workers to redo a piece if the job was not done correctly. Aponte reported to him if an employee was performing poorly. Parlante and Aponte

[8] The above narrative is based on the testimony of Victor Belevan, an admitted supervisor, and upon the testimony of Aponte and Santiago. I credit their testimony. I reject the Parlantes' assertion that they had no conversations with Belevan or employees about the Union. Belevan, Aponte, and Santiago testified in a forthright, confident, and completely truthful way. The testimony of Belevan, Aponte, and Santiago was mutually corroborative as to events which would have been indelibly impressed upon them. Although Aponte may have been mistaken about the date of her first conversation with Belevan about the Union—she stated that it was January 18 and Belevan said that it occurred on January 19 or 20—this was a minor error which did not impair her credibility. On the other hand, the testimony of the Parlantes was evasive, rambling, and at times unresponsive. They did not impress me as being credible witnesses when compared with Belevan, Aponte, and Santiago.

[9] Aceste, an admitted agent of Respondent, is married to John Parlante's sister. He travels to and from work with the Parlantes, sits with them in their office before the start of the workday, and sees them socially.

[10] This is according to the credited testimony of Belevan. In view of my disposition of the issue relating to the discharge of Belevan, I need not resolve whether Belevan attacked Parlante with a knife as testified by Aceste.

[11] The sewing machine operators were trained by Supervisor Victor Belevan.

[12] There were about 15 production employees employed by Respondent. Seven of these were sewing machine operators and eight were floorworkers.

would then discuss the situation and he gave her orders as to what to tell the employees.

Under Section 2(11) of the Act, a supervisor is "any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action." To qualify as a supervisor, it is not necessary that an individual possess all of these powers. Rather, possession of any one of them is sufficient to confer supervisory status. However, possession, alone, of one of these powers does not suffice to confer supervisory status. Rather, supervisory status exists only if the power is exercised with independent judgment on behalf of management, and not in a routine or clerical manner.

Aponte clearly had none of the enumerated indicia of supervisory status. It is apparent that Aponte's primary duties were those of a floorworker. Although she had some limited responsibility for the training of new floorworkers, this was a byproduct of her status as a senior employee with superior skills and bilingual ability.

Respondent essentially asserts that Aponte's supervisory status is derived from her assigning and checking the work of the floorworkers. However, it is clear that her role in assigning the work was limited to the routine movement of goods in process from one procedure to the next. Aponte's monitoring of employees was only incidental to her alleged responsibility for assuring the quality of Respondent's products as an inspector or quality control person would do.

The Board has held that "the authority of inspectors, who are primarily responsible for the quality of a product, to halt production and have employees make up defective work . . . does not require the conclusion that they are supervisors within the meaning of the Act."[13]

The work of an inspector, ensuring the quality of the product being produced, is not one of the powers listed in Section 2(11) of the Act and, in fact, Congress made a conscious decision to exclude such work from the definition of a statutory supervisor.[14]

Of course, if in performing her inspection function Aponte had exercised any of the supervisory powers of Section 2(11) of the Act, there would be a basis for concluding that she had been a supervisor. However, as found above, Aponte did not exercise any of those statutory powers. So far as the record discloses, any direction that she may have given in connection with the inspection of work being performed by the employees was "dictated solely and routinely by the specific demands of each production job."[15]

It is important to note that Mr. and Mrs. Parlante and admitted supervisor Belevan all exercised supervisory authority over Respondent's approximately 15 production employees. If Aponte was indeed a supervisor, there would thus have been 4 supervisors for such a small unit of only 15 employees. It would be highly unrealistic that such was the case. Moreover, Aponte earned less than certain other production workers.

It is clear and I find and conclude that Aponte, possessing none of the indicia of supervisory status set forth in Section 2(11) of the Act, was not a supervisor within the meaning of the Act.

C. *Analysis and Discussion*

1. The alleged violations of Section 8(a)(1) of the Act

It is undisputed that on January 18 Respondent possessed knowledge that the Union was attempting to organize its employees. Thus, Respondent admits that union official Constantine visited its premises that day and stated that he represented its employees. Certainly, on January 20, when Respondent received the Union's letter stating that an overwhelming majority of the employees had designated it as their representative and demanding recognition and bargaining, there was no doubt in the minds of the Parlantes that their employees had been engaging in activity on behalf of the Union.

I credit the admission of Supervisor Belevan and the testimony of employees Aponte and Santiago that, pursuant to his instructions from the Parlantes, Belevan asked them on January 19 or 20 whether they knew anything about the Union and whether they signed cards for the Union. I also credit Belevan's admission that on January 27 or 28, in furtherance of his orders from the Parlantes, he asked other employees whether they were aware of any union meetings and whether they signed any union cards or knew anything about the Union. I also credit Aponte's testimony that on or about January 18, and again between January 18 and February 1, Mrs. Parlante asked her if she knew anything about the Union or who brought it in, and I similarly credit Santiago's testimony that at or about that time Mr. Parlante asked him whether he knew anything about the Union and if he knew whether anyone signed a card for the Union.

The questions asked of the employees as set forth above were unlawful. Neither the Parlantes nor Belevan articulated any legitimate reason for their questioning of employees, nor did they provide any assurance that Aponte or Santiago would suffer no reprisals for their union activity. Such questions, therefore, were coercive interrogations in violation of Section 8(a)(1) of the Act.

Aponte credibly testified that on February 1 Mrs. Parlante told her that she would discharge the person responsible for bringing in the Union. That statement constitutes an unlawful threat to discharge employees because of their union activity, and as such violates Section 8(a)(1) of the Act.

The General Counsel alleges that on or about February 2 Respondent offered and promised employees wage increases, vacations, and other benefits and improvements in their working conditions and terms of employment to induce them to refrain from becoming or remaining members of the Union, to refrain from giving any assistance or support to it, and to abandon their membership in and activity in behalf of the Union.

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[13] *Janesville Auto Transport Co.*, 193 NLRB 894, 875 (1971); see also *Martin Aircraft Tool Co.*, 115 NLRB 324, 325 (1956).

[14] See *Clayton Mark & Co.*, 76 NLRB 230, 232-234 (1948), where the inspector had the authority to require the employee to redo the defective work which affected his pay.

[15] *Print-O-Stat*, 247 NLRB 272, 273 (1980); see also *Hydro Conduit Corp.*, 254 NLRB 433, 440 (1981).

There is no evidence of any offer or promise of benefits to employees. However, employee payroll cards for 1982, relied upon by the General Counsel, state that employees received such paid holidays as George Washington's Birthday, Good Friday, and Memorial Day, and paid sick days.[16] The General Counsel alleges these benefits were accorded to employees, for the first time, in 1982 after the advent of the Union. Payroll records for the same employees for 1981 do not indicate, with certain exceptions that such benefits were given to employees in 1981.[17]

Respondent alleges that it did give paid sick days and certain holidays to employees in 1981, but asserts that it failed to make the appropriate notations on employee payroll cards. It further maintains that it had no formal policy regarding the granting of such benefits.

Mrs. Parlante testified credibly, in this instance, regarding her haphazard bookkeeping practices that she did not always maintain precise records of paid holidays or sick leave taken by employees. The fact that employee Calero received paid sick leave in 1981 and that she and another employee were paid for Memorial Day in that year severely undermines the General Counsel's argument that employees first received those benefits in 1982 as an inducement to abandon the Union. While it appears that careful records regarding the payment of such benefits were first kept in 1982, it also appears that at least paid sick leave and Memorial Day pay were paid to employees in 1981.[18] It has not been proven that George Washington's Birthday or Good Friday were not paid holidays in 1981.[19]

In any event, even assuming that in 1982 Respondent for the first time granted paid sick leave and certain paid holidays to employees, no connection has been shown between the payment of these benefits and the advent of the Union. Although some suspicion is raised at the granting of a paid holiday for Washington's Birthday on February 15 with the election being held 8 days later on February 23, nevertheless no evidence has been presented in support of the General Counsel's contention that the granting of any benefit was intended to cause the employees to abandon their support for the Union. I will therefore recommend dismissal of the complaint allegations that Respondent unlawfully offered and promised benefits to employees.

2. The discharges

a. *Victor Belevan*

All parties agree that Belevan is a supervisor within the meaning of Section 2(11) of the Act. The General Counsel alleges in the complaint that Respondent discharged Victor Belevan as a means of intimidating its employees because those employees, *inter alia*, engaged in union activities, and to induce them to refrain from engaging in those activities.

Notwithstanding the general exclusion of supervisors from coverage under the Act,[20] the discharge of a supervisor may violate Section 8(a)(1) of the Act where he fails to prevent unionization.[21]

The General Counsel argues that Belevan was unlawfully discharged because (a) the Parlantes "perceived" that he failed to commit unfair labor practices by not interrogating employees or inadequately interrogating them, and (b) he failed to prevent the unionization of Respondent. There is no evidence that Respondent in fact fired Belevan for these reasons, and, accordingly, counsel for the General Counsel asks that I draw inferences to support her theory. I am unable to do so. Belevan was not a reluctant participant in his interrogations of employees. Upon request by the Parlantes he readily and immediately committed violations of Section 8(a)(1) which I have found. He reported the results of the questionings to the Parlantes. There was no indication by the Parlantes that they were unhappy with his fruitless efforts to learn of the union activities of the employees.[22] Indeed, they were no more successful than he was since the employees, when questioned either by Belevan or the Parlantes, denied any involvement in the Union. Accordingly, the Parlantes could not have expected that he would ascertain any more information than they could obtain through their interrogation of employees.

If any inference were to be drawn, it would be that Belevan was discharged because the Parlantes believed that he was active for the Union and involved in organizing the employees. Thus, Belevan was pointedly asked by the Parlantes immediately after the advent of the Union whether he had seen or spoken to any union representative, whether he knew anything about the Union, and whether he was aware of any meeting outside Respondent's premises. Similar questions were again asked of Belevan about 10 days later. Moreover, Belevan's discharge, moments after the discharges of Aponte and Santiago, came 1 day after the threat by Mrs. Parlante to fire anyone who was responsible for the Union. Although only Aponte and Santiago were directly accused of bringing in the Union, it is clear that the Parlantes believed that Belevan, as the sole Spanish-speaking supervisor, was also responsible.[23] Thus, Aceste, the admitted agent of Respondent, told Belevan that his discharge may have been related to the Union.

Under these circumstances, a supervisor may be lawfully discharged for engaging in union activities even where, as here, the discharge is contemporaneous with the unlawful discharge of statutory employees.[24] I ac-

[16] Respondent made notations at the bottom of the payroll cards that the employees received the holiday or a certain amount of sick pay.

[17] The payroll cards of Aurora Calero and Luz Canjura state that they were paid for Memorial Day 1981. The card for Calero also states that she received one paid sick day in June 1981.

[18] I am aware that in her pretrial affidavit of February 12, 1982, Mrs. Parlante stated that no production employees received paid sick days; however, this is contradicted by documentary evidence that Calera received paid sick leave.

[19] I cannot rely on the sole testimony of Aponte that Respondent was open on Good Friday 1981.

[20] *Parker-Robb Chevrolet*, 262 NLRB 402 (1982).

[21] *Talladega Cotton Factory*, 106 NLRB 295 (1953), enfd. 213 F.2d 209, 215-217 (5th Cir. 1954).

[22] *Talladega, supra.*

[23] The complaint alleged that Respondent believed that Belevan supported the Union.

[24] *Parker-Robb Chevrolet, supra.*

cordingly find and conclude that there is no basis for finding the discharge of Belevan unlawful.

The General Counsel alleges in the complaint that Respondent, by John Parlante and Frank Aceste, physically assaulted Belevan in the presence of its employees because Respondent believed that Belevan had joined and engaged in activities in support of the Union. As set forth above, upon hearing that he had been discharged, Belevan entered the plant and was told by Mr. Parlante to leave. Belevan became enraged and admittedly "lunged at" and "attacked" Mr. Parlante who then defended himself by restraining Belevan with a headlock. When Mr. Parlante released Belevan, he (Belevan) then saw Aceste approach and he "thought" that Aceste would attack him so he "lifted his foot" toward him. After Belevan calmed down he left the plant without incident. Under these circumstances, it is obvious that, understandably unhappy and admittedly enraged with the news of his discharge, which I have found to be lawful, and being asked to leave the shop, Belevan, on his own, initiated and launched a physical attack upon Mr. Parlante and Aceste. They defended themselves and restrained Belevan without using unnecessary force. I am therefore unable to find that Mr. Parlante or Aceste attacked Belevan because either one believed that he supported the Union. I accordingly shall recommend dismissal of this allegation of the complaint.

b. *Lidia Aponte and Froilan Santiago*

The credited evidence establishes that Aponte and Santiago contacted the Union, initiated the union organizing drive, and advised employees in the shop of the union meeting. In addition, Aponte obtained signed union cards from employees at Respondent's premises. Respondent became aware of its employees' interest in the Union with the visit of its officials on January 18, and specifically became aware, on February 1, that Aponte and Santiago were responsible for the advent of the Union. I have credited Aponte's testimony that on February 1 Mrs. Parlante told her that the bank manager heard her and Torres speak about the Union.[25] I have also credited the threats made by Mrs. Parlante to union official Constantine that employees would have to be laid off and the threats to Aponte that the persons responsible for the Union would be discharged. Those threats were effectuated when, on February 2, Aponte and Santiago were accused of bringing in the Union and were told that they were fired for that reason. The Parlantes' animus toward the Union is readily apparent in Mr. Parlante's statement to Aponte and Santiago on February 2 that they "stabbed" him in the back, in the unlawful threats set forth above, and in the Parlantes' instruction that Belevan unlawfully interrogate employees. Based upon all of these facts and the timing of the discharges, which occurred shortly after the Union made its demand for recognition, I find that the General Counsel has made a *prima facie* showing that the union activity of Aponte and Santiago was a motivating factor in Respondent's decision to discharge them.[26]

Respondent asserts that it decided to lay off employees beginning in November 1981 because of a severe financial crisis, and that it determined the specific employees to be selected for layoff based on their productivity or attendance. Mrs. Parlante testified without contradiction that in November and December 1981 Respondent owed $55,000 to $60,000 to contractors but in that period of time was owed $55,000 by its customers. In November 1981 Mrs. Parlante recommended to her husband that he lay off certain employees but he refused to do so at that time. However, in December 1981 the Company was operating at a $17,000 loss, but through the help of her father-in-law who lent money to Respondent it was able to stay solvent. One reason for the layoffs given by Mrs. Parlante was that gross sales were down for the period December 1981 and January 1982. However, she testified that gross sales in December 1981 were $29,802, nearly $5,000 higher than in the same period in 1980. In addition, gross sales increased in January 1982 to $35,869, representing a $6,000 increase from the previous month.[27] Mrs. Parlante also asserted that an additional reason for the layoffs was her concern that the union campaign might cause Respondent to incur additional expenses, including the hire of an attorney. The fact that Respondent did not learn of the union campaign until January 18, 1982, severely undercuts its connection that the layoffs began in December 1981. In support of its assertion that layoffs began in December 1981, Respondent claims that salesman Eric Roberts and employee Samuel Rivas were laid off for economic reasons prior to the advent of the Union. However, the evidence is clear that Respondent discharged Roberts on or about December 30, 1981, for cause—because he was not utilizing his best efforts to obtain sales for Respondent. In fact, Mr. Parlante was interviewing a replacement for Roberts on January 18, 1982, when union official Constantine called upon Respondent. The fact that Roberts was being replaced surely indicates that he was not laid off for economic reasons.[28]

With respect to Samuel Rivas, Respondent asserted that he was laid off in January 1982. However, its payroll records directly refute that statement. The records show that Rivas was employed continuously from January 5 through June 29, 1982, with the exception of 1 week in late February and 5 weeks from March 11 to about April 20, 1982.[29] Thus, Respondent's claim that the dismissals of Aponte and Santiago were part of a continuing layoff which began in December 1981 lacks merit.

Moreover, Mr. Parlante's order to Mercedes, immediately after the discharge of Aponte and Santiago, to bring 10 new employees lends further support to my

[25] The bank involved is the one at which Respondent has its account and is also used by employees to cash their paychecks.

[26] *Wright Line*, 251 NLRB 1083 (1980).

[27] Gross sales continued to rise to $39,955 in February 1982 and to $43,308 in March 1982.

[28] Further undermining her assertion that Roberts was laid off for economic reasons was Mrs. Parlante's pretrial written assertion that Roberts was discharged for being insubordinate. Moreover, Mr. Parlante testified that he discharged Roberts because he was not selling enough items.

[29] The records indicate "lay off requested" for those two periods.

finding that the terminations of Aponte and Santiago were not economically motivated.

Equally unacceptable is Respondent's argument that it selected Aponte and Santiago for layoff because of their lateness. It is undisputed that Aponte and Santiago were frequently late. They credibly testified that no mention was made at the time of their discharge regarding their lateness. It is most evident that Respondent frequently condoned the lateness of its employees. In this connection, Mrs. Parlante testified that "you have to bend on certain people because they are excellent,"[30] and "you had to make concessions for certain things." Aponte and Santiago, who lived together and traveled to and from work together, had difficulty in arriving at work on time because they took public transportation and had to walk to and from the railroad station. Mrs. Parlante was aware of these problems and tried to remedy them. She admitted that Mr. Parlante told Aponte when she arrived late to "get here when you can because I need you." The lateness of Aponte and Santiago was a longstanding problem.[31] Nevertheless, Respondent condoned their lateness, and attempted to alleviate the problem by requesting that Supervisor Belevan pick them up at the railroad station, and he did so.

Mrs. Parlante gave contradictory testimony regarding her reasons for not recalling Aponte, at first stating that she intended to recall Aponte but that there was no place for her,[32] and later declaring that "it would be very easy to call her back because she's very knowledgeable and I like her," but, when she (Parlante) was told by union official Constantine on February 3 that Aponte was the cause of all the trouble that would soon befali her, she "inferred" that Aponte was dissatisfied with her job and would not want to be recalled.

With respect to Santiago, Mrs. Parlante incredibly testified that, aside from his lateness, she wanted to discharge him on his second day of employment because he misrepresented that he had experience as a leather cutter. However, Respondent kept Santiago in its employ for 1 year thereafter, from January 21, 1981, to February 2, 1982. Although Mrs. Parlante claimed that Santiago was a poor worker who had to be moved from job assignment to job assignment, Respondent nevertheless "bent over backwards to accommodate him."

As evidence of his poor work, Respondent produced an invoice from Valor Corp. which indicated that stock numbers were erroneously omitted, which allegedly was Santiago's responsibility. However, this alleged error did not come to Respondent's attention until after Santiago was discharged and thus could not have been relied upon by it in its decision to fire him.

Mr. Parlante also testified that Respondent could not recall Santiago after the purported layoff because it had no place for him. However, Santiago was replaced by Mr. Parlante who, at the time of the hearing, was training Carlos Zetino, an employee who "does not speak English too well. It's going to be difficult." Thus, it is obvious that Respondent had no intention of recalling Santiago, who speaks English and had about 6 months' experience in shipping for Respondent at the time of his discharge.

I therefore find and conclude that Respondent has failed to demonstrate that it would have taken the same action against Aponte and Santiago in the absence of their union activities.

Accordingly, for the reasons set forth above, I find that Respondent's discharge of Lidia Aponte and Froilan Santiago violated Section 8(a)(3) and (1) of the Act.

CONCLUSIONS OF LAW

1. Respondent Cobra Ltd., d/b/a Cobra Gunskin, is, and at all times material herein has been, an employer engaged in commerce within the meaning of the Act.

2. United Brotherhood of Industrial Workers, Local 424, is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) and (3) of the Act by discriminatorily discharging and failing to reinstate its employees Lidia Aponte and Froilan Santiago for engaging in union activities in behalf of United Brotherhood of Industrial Workers, Local 424.

4. By asking employees whether they knew anything about the Union, whether they signed cards for the Union, whether they were aware of any union meetings, and whether they knew who brought in the Union, and by threatening to discharge the employees responsible for bringing in the Union, Respondent has violated Section 8(a)(1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

6. Respondent has not violated the Act, as alleged in the complaint, by discharging its supervisor Victor Belevan, by offering and promising to its employees wage increases, vacations, and other benefits and improvements in their working conditions and terms of employment, or by physically assaulting Victor Belevan in the presence of its employees.

THE REMEDY

Having found that Respondent unlawfully discharged Lidia Aponte and Froilan Santiago on February 2, 1982, I recommend that Respondent be ordered to reinstate them and make them whole for any loss of earnings they may have suffered as a result of the discrimination against them. The amount of backpay shall be computed in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest thereon to be computed in the manner prescribed in *Florida Steel Corp.*, 231 NLRB 651 (1977).[33]

[30] Aponte was described by Respondent as an excellent worker.

[31] Mr. Parlante testified that he first warned Aponte about her lateness 6 months prior to her discharge. She was employed for nearly 1-1/2 years before her termination.

[32] This was allegedly because male employees were retained because strength was needed to press a pistol into an unmolded holster and also because the male employees were willing to immerse their hands into a black dye to stain the holster. However, there was no evidence that Aponte's regular job included pressing the pistol into the leather holster and moreover she testified that she had submerged her hands into the dye as part of her duties.

[33] See, generally, *Isis Plumbing Co.*, 138 NLRB 716 (1962).

Upon the foregoing findings of fact and the entire record in this proceeding, I make the following recommended:

ORDER[34]

The Respondent, Cobra Ltd., d/b/a Cobra Gunskin, Farmingdale, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging and thereafter failing to reinstate its employees because they engage in union activities.

(b) Asking employees whether they know anything about the Union, whether they signed cards for the Union, whether they were aware of any union meetings, and whether they knew who brought in the Union.

(c) Threatening to discharge employees responsible for bringing in the Union.

(d) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which will effectuate the policies of the Act:

(a) Offer Lidia Aponte and Froilan Santiago immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings they may have suffered as a result of their discharge in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Expunge from its files any reference to the discharges of Lidia Aponte and Froilan Santiago on February 2, 1982, and notify them in writing that this has been done and that evidence of the unlawful discharges will not be used as a basis for future personnel actions against them.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Farmingdale, New York, copies of the attached notice marked "Appendix."[35] Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive day thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges violations not specifically found herein.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which both sides had an opportunity to present evidence, the National Labor Relations Board has found that we violated the Law and has ordered us to post this notice.

WE WILL NOT discharge our employees because they engage in union activities.

WE WILL NOT ask our employees whether they know anything about the Union, whether they signed cards for the Union, whether they are aware of any union meetings, or whether they know who brought in the Union.

WE WILL NOT threaten to discharge employees responsible for bringing in the Union.

WE WILL offer Lidia Aponte and Froilan Santiago immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equilvalent positions, without prejudice to their seniority or other rights and privileges.

WE WILL make Lidia Aponte and Froilan Santiago whole, with interest, for any loss of pay they may have suffered as a result of our discrimination against them.

WE WILL expunge from our files any reference to the disciplinary discharges of Lidia Aponte and Froilan Santiago on February 2, 1982, and WE WILL notify them that this has been done and that evidence of the unlawful discharges will not be used as a basis for future personnel actions against them.

COBRA LTD., D/B/A COBRA GUNSKIN

[34] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[35] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."